

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Revise
Commission General Order Numbers 95 and 128.

Rulemaking 01-10-001

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING CN UTILITY CONSULTING, LLC's NOTICE OF
INTENT TO CLAIM COMPENSATION**

This ruling responds to a notice of intent (NOI) to claim compensation filed by CN Utility Consulting, LLC (CNUC) on June 28, 2003, in the above referenced proceeding. This ruling addresses the requirements of the Public Utilities Code, Division 1, Part 1, Chapter 9, Article 5, §1801 *et seq.* and Rule 76.71 *et seq.* of the Commission's Rules of Practice and procedure.¹

Under §1804(a)(1), "[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference (PHC) is held, file and serve on all parties to the proceeding a notice of intent to claim compensation." This Rulemaking was initiated in October, 2001, but since there has been no PHC, CNUC's filing on June 28, 2003, is considered timely. No party protested CNUC's NOI request.

¹ Unless otherwise indicated, all subsequent citations to code sections refer to the Public Utilities Code, and all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of title 20 of the California Code of Regulations.

After reviewing CNUC's filing, I am unable to determine, based on the information provided in the NOI, whether CNUC meets the definition of a customer, or meets the significant financial hardship test. Therefore, I cannot at this time conclude whether it is eligible for compensation in this proceeding. CNUC may amend its NOI to make this showing no later than 30 days after the mailing date of this ruling. The Commission cannot determine whether CPUC made a substantial contribution to the proceeding until the proceeding has concluded.

Eligibility

To be eligible for compensation, a participant in a formal Commission proceeding, such as this one, must establish that it is a "customer" and that participation without compensation would pose a significant financial hardship.

2.1 Customer Status

Section 1802(b) defines the term "customer" as:

[A]ny participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers. . .

Thus, there are three categories of customers: (1) a participant representing consumers; (2) a representative authorized by a customer; and (3) a representative of a group or organization authorized in its articles of incorporation or bylaws to represent the interests of residential customers. The Commission requires a participant to specifically identify in its NOI how it meets the definition of customer and, if it is a group or organization, provide a copy of its articles or bylaws, noting where in the document the authorization to

represent residential ratepayers can be found. (Decision (D.) 98-04-059, *mimeo.*, at pp. 30-32; *see, also*, fn. 13-16.) Further, a group or organization should indicate the percentage of its membership comprised of residential ratepayers. (See D.98-04-059, *mimeo.*, at pp. 83 and 88.)

A Category 1 customer is an actual customer who represents more than his own narrow self-interest; a self-appointed representative of at least some other consumers, customers, or subscribers of the utility. A Category 2 customer is a representative who has been authorized by actual customers to represent them. Category 2 connotes a more formal arrangement where a customer, or a group of customers, selects a presumably more skilled person to represent the customers' views in a proceeding. The Commission has noted that the statute permits a series of authorizations. For example, a customer or group of customers forms or authorizes a group to represent them, and the group in turn authorizes a representative such as an attorney to represent the group. A Category 3 customer is a formally organized group authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers.

CNUC does not identify what category of customer it is. It does not indicate whether it is a self-appointed representative of other customers of the utility (Category 1) or a representative who has been authorized by actual customers to represent them under a more formal arrangement (Category 2) or a formally organized group authorized to represent the interests of residential customers (Category 3). This determination of customer status is important because it impacts the requirements for a finding of significant financial hardship.

If CNUC seeks a finding of eligibility it must amend its NOI within 30 days of the mailing date of this ruling to specify the customer category they seek eligibility under.

2.2 Significant Financial Hardship

CNUC is not seeking a finding of significant financial hardship in the NOI, but intends to provide such a showing in its request for compensation.

Section 1804(a)(B) allows the customer to include a showing of significant financial hardship in the NOI. Section 1802(g) defines “significant financial hardship” as:

“either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocates fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.”

Under § 1804(a)(2)(B), this showing may be made in the NOI, or alternatively, deferred until the request for compensation is filed.

If CNUC seeks to participate as a Category 1 customer, it must demonstrate that undue financial hardship will occur as a result of its participation here. (*See* Section 1802(g).) D.98-04-059, *slip op.* at p. 36, requires participants seeking a finding of significant financial hardship to disclose their finances to the Commission, under appropriate protective order. As described in D.98-04-059, this means that Category 1 customers must disclose their gross and net monthly income, monthly expenses, cash and assets, including equity in real estate. Subsequent rulings have determined that it is reasonable to exclude the equity of a participant’s personal residence from this disclosure.

If CNUC seeks to participate as a Category 2 customer, *i.e.*, as a representative authorized by a customer, we expect the representative to provide the same financial information described above for the customer who authorized it to serve in a representative capacity.

Without such information, the Commission is not in the position to determine whether participation constitutes a significant financial hardship for a Category 1 or 2 customer. In order to reduce the burden of producing such information, customers seeking eligibility rulings are able to file personal financial data under seal. In D.98-04-059 we developed a model filing for individual intervenors to obtain a protective order for use in intervenor compensation proceedings. For convenience, the model filing and protective order are attached to this ruling as Appendix A and B. As described in D.98-04-059, *slip op.*, p. 40:

“Procedures for obtaining information and records in the possession of the Commission are described in General Order (GO) 66-C. Section 2 of GO 66-C describes some of the public records that are not open to public inspection. An intervenor seeking a protective order governing availability of personal financial information will need to assert a ground for excluding such personal financial information from public inspection.

GO 66-C § 2.2 includes as a public record not open to public inspection “[r]ecords or information of a confidential nature furnished to, or obtained by the Commission.” The personal financial information of an individual intervenor is arguably information of a confidential nature. While it is important to make this information available to parties preparing to respond to an individual intervenor’s assertion of eligibility for compensation, it is difficult to imagine a situation where a public benefit warrants making the personal financial

information of an individual intervenor generally available for public inspection. However, we do not rule out the possibility that such a situation may present itself. Therefore, we will consider GO 66-C requests from individual intervenors to exclude their personal financial information from public inspection on a case-by-case basis. ”

If CNUC seeks to participate as Category 1 or 2 customer, it must meet the requirements for disclosure described above to qualify for a finding of significant financial hardship.

If CNUC seeks to participate as a Category 3 customer, § 1802(g) defines financial hardship as a state in which “the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.” To qualify for a finding of significant financial hardship under Category 3, CNUC will need to demonstrate that effective participation in this proceeding may cost well in excess of typical residential electric bills for its individual members. In order to make that finding, we need to know the estimated cost of CNUC’s participation and the average bills of the members of the organization it is appearing for, as well as the financial situation of the organization.

Because CNUC did not include a financial showing in its NOI and we cannot determine which customer category it intends to participate under, we are unable to determine whether it has satisfied the significant financial hardship requirement. CNUC may provide such information in an amended NOI if desired or may make the required showing in the request for award of compensation. In either case, CNUC is reminded that a finding of significant financial hardship in no way ensures an award of compensation (Section 1804(b)(2)).

**Nature and Extent of Planned Participation;
Estimate of Compensation**

Section 1804(a)(2)(A) provides that the NOI shall include both a statement of the nature and extent of a customer's planned participation and an itemized estimate of the compensation that the customer expects to request.

3.1 Planned Participation

The Commission has stated that the information provided on planned participation should provide the basis for a critical preliminary assessment of whether (1) an intervenor will represent customer interests that would otherwise be underrepresented, (2) the participation of third-party customers is nonduplicative, and (3) that participation is necessary for a fair determination of the proceeding. Parties are encouraged to coordinate amongst themselves to ensure that efforts are not duplicated.

The NOI states that CNUC's intends to fully participate in the proceeding by presentation of testimony, by attending and contributing to workshops, and by filing comments and other pleadings as necessary.

Participation in Commission proceedings by parties representing the full range of affected interests is important and ensures a fully developed record. CNUC's NOI, however, fails to state what interests it represents, whether that interest is the same or different than that advanced by other participants to the proceeding, and what significant contribution it intends to make to the proceeding. Compensation will not be paid for duplicative efforts. Merely appearing and stating positions will not assure compensation. I encourage CNUC to work actively with the other parties to agree among themselves, on issues that they will each address, in order to avoid duplication of effort should preparation of testimony or evidentiary hearings ultimately be required.

3.2 Estimate Compensation

Pub. Util. Code § 1804(a)(2)(A)(ii) requires that the NOI include an itemized estimate of compensation the intervenor expects to request. At this time, CNUC estimates a total projected budget of \$51,620 for this proceeding. CNUC's proposed budget for this matter is as follows:

| | | |
|-------------------|---------------------------|----------|
| Professional Time | (220 hours @\$200/hour) | \$44,000 |
| Travel Time | (60 hours @ \$87.50/hour) | \$5,250 |
| Other costs | | \$2,370 |

CNUC is cautioned that the Commission does allow for recovery of expenses, but only straight line expenses, not any % additur as CNUC requested in its NOI.

NOI Deficiencies

CNUC's NOI was timely filed, but there are deficiencies in the NOI filing that must be corrected before the Commission can determine that CNUC is eligible for compensation in this proceeding. Specifically, CNUC must indicate how it qualifies as a "customer," how it qualifies for financial hardship, what significant contribution it will provide to the proceeding that is not duplicative of that presented by other participants.

CNUC is therefore given 30 days from the date this ruling is issued to supplement its NOI filing.

This ruling does not address the merits of CNUC's final compensation claim. The reasonableness of the hourly rates requested for CNUCs representatives and expert witnesses will be addressed in its Request for Compensation.

IT IS RULED that:

1. CN Utility Consulting, LLC's (CNUC) Notice of Intent was deemed timely filed.
2. CNUC did not provide sufficient information for the Commission to determine if it met the eligibility requirements of Public Utilities Code § 1804(a), including the requirement that it establish significant financial hardship.
3. CNUC has 30 days from the issuance date of this ruling to supplement its NOI to address the specified deficiencies.
4. CNUC is not yet found eligible for compensation in this proceeding.
5. CNUC fulfilled the requirements of § 1804(a)(2)(A) by providing a statement of the nature and extent of its planned participation and an itemized estimate of the compensation it expects to request.
6. Parties requesting compensation shall make every effort to reduce duplication of contribution.
7. This ruling does not address the merits of CNUC's final compensation claim.

Dated January 26, 2004 San Francisco, California.

/s/ Carol Brown

Carol Brown
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding CN Utility Consulting, LLC's Notice of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated January 26, 2004, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.